

Senate Bill No. 752

CHAPTER 362

An act to add Section 31678.31 to the Government Code, relating to county employees' retirement, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 11, 2009. Filed with
Secretary of State October 11, 2009.]

LEGISLATIVE COUNSEL'S DIGEST

SB 752, Correa. County employees' retirement: Orange County.

(1) The County Employees Retirement Law of 1937 permits counties and districts, as defined, to provide retirement benefits to their employees pursuant to its provisions. The law permits the board of supervisors or the governing body of a district in Orange County, by resolution adopted by majority vote and pursuant to a memorandum of understanding, as specified, to make certain formulas for the calculation of benefits for general or safety members applicable to the employees of a bargaining unit comprised of general members, safety members, or employees of the Probation Services Unit and Probation Supervisory Management Unit, as specified, and requires the affected members, subject to certain conditions, to pay some or all of those additional contributions, as specified.

This bill would permit, in Orange County, the board of supervisors, or the governing body of a district within the county, by resolution adopted by majority vote, to require an employee hired after approval of the resolution, to make a written election between 2 specified pension calculations within 45 days of beginning employment. The bill would require that an employee who fails to elect one of the pension calculations within 45 days of beginning employment be deemed to have elected the other. The bill would also permit the resolution, as described above, to require a current employee to make a similar written election regarding his or her own pension benefits for future service within 180 calendar days of approval of the resolution. The bill would require that a current employee who chooses to terminate a specified pension calculation be provided with a written explanation of the effect and impact of the termination and sign a specified affidavit. The bill would further permit the resolution to require a current employee of the county or district, hired before approval of the resolution, who subsequently becomes eligible for a specified pension calculation to make a one-time written election between the 2 pension calculations for future service within 45 days of becoming eligible. The bill would require that the employee who chooses to terminate a specified pension calculation be provided with a written explanation of the effect and impact of the termination and sign a specified affidavit. The bill would provide that failure

to make an election within 45 calendar days shall be considered cause for termination of employment until the required election has been made. The bill would make these elections irrevocable, except as specified.

The bill would require that a retirement allowance for service rendered prior to the effective date of the election be calculated under the employee's prior pension calculation and would provide that an employee who has made this election is not eligible for retirement unless the employee meets the minimum requirements of the provisions applicable at the date of retirement. The bill would require that specified pension elections include the signature of the employee's designated beneficiary or a specified written declaration. The bill would provide a civil penalty for a person who knowingly provides false information in the declaration, in an action to be brought at the option of a public prosecutor. The bill would require that an employee who elects the lesser of the 2 specified pension calculations be eligible to receive a contribution to a defined contribution program from the county or district based on the employee's contribution to a defined contribution program. The bill would permit the resolution to require a member who elects or is deemed to have elected the lesser of the 2 pension calculations to pay additional member contributions that would not result in an additional benefit to the member, as specified. The bill would permit the resolution to apply these provisions to unrepresented employees, as specified, and would provide that its provisions not be applicable to safety members of the retirement system. The bill would provide that an employee who fails to certify his or her election under specified circumstances would continue to be covered by his or her immediately preceding retirement plan, as specified. The bill would provide that the adoption of the resolution by the county would not extend to the employees of any district within the county, and would permit the governing body of a district to elect to make its provisions applicable to the employees of the district irrespective of whether the board of supervisors has made that election applicable to employees in the county.

(2) This bill would declare that it is to take effect immediately as an urgency statute.

The people of the State of California do enact as follows:

SECTION 1. Section 31678.31 is added to the Government Code, to read:

31678.31. (a) Notwithstanding any other provision of this chapter, the board of supervisors or the governing body of a district within the county may, by resolution adopted by majority vote, do the following:

(1) Require an employee hired after approval of the resolution, to elect in writing, either the pension calculation stated in Section 31676.19 or the pension calculation stated in Section 31676.01. The election shall be made within 45 calendar days of beginning employment with the county or the district. If an employee does not elect the pension calculation stated in Section 31676.19 within 45 days of beginning employment, the employee

shall be deemed to have elected the pension calculation stated in Section 31676.01. An employee shall not be permitted to rescind his or her election unless the board of supervisors or the governing body of a district, through the adoption of a subsequent ordinance or resolution by majority vote, makes a provision permitting the employee to rescind the election applicable to the county or district.

(2) Require a current employee of the county or district covered by the pension calculation stated in Section 31676.19, hired before approval of the resolution, within 180 calendar days of approval of the resolution to make, at the employee's option, a one-time written election to terminate the application of the pension calculation stated in Section 31676.19 for future service and elect instead the pension calculation stated in Section 31676.01 for future service. This election shall be signed by the employee. Prior to signing an election, a current employee who chooses to terminate the pension calculation stated in Section 31676.19 and elects instead the pension calculation stated in Section 31676.01, shall be provided by the county or district governing body with a written explanation of the effect and impact of the termination. A current employee who chooses to terminate the pension calculation stated in Section 31676.19 shall be required to sign an affidavit stating that the employee has been fully informed regarding the effect of the termination and understands that the termination is irrevocable. The affidavit shall also state that the employee has chosen termination of his or her own free will and was not coerced into termination by the employer or any other person. An employee shall not be permitted to rescind his or her election unless the board of supervisors or the governing body of a district, through the adoption of a subsequent ordinance or resolution by majority vote, makes a provision permitting the employee to rescind the election applicable to the county or district.

(3) Require a current employee of the county or district, hired before approval of the resolution, but not covered by the pension calculation stated in Section 31676.19, who after approval of the resolution becomes eligible for the pension calculation stated in Section 31676.19, to make a one-time written election between the pension calculation stated in Section 31676.19 for future service and the pension calculation stated in Section 31676.01 for future service. The election shall be made within 45 calendar days of becoming eligible for the pension calculation stated in Section 31676.19. The election shall be signed by the employee. Prior to signing the election, an employee who does not elect the pension calculation stated in Section 31676.19 and elects instead the pension calculation stated in Section 31676.01 shall be provided by the county or the district governing body with a written explanation of the effect and impact of the election. An employee who does not choose the pension calculation stated in Section 31676.19 shall be required to sign an affidavit stating that the employee has been fully informed regarding the effect of the election and understands that the election is irrevocable. The affidavit shall also state that the employee has chosen the election of his or her own free will and was not coerced into the election by the employer or any other person. An employee shall not be

permitted to rescind his or her election unless the board of supervisors or the governing body of a district, through the adoption of a subsequent ordinance or resolution by majority vote, makes a provision permitting the employee to rescind the election applicable to the county or district. Failure to make an election within 45 calendar days shall be considered cause for termination of employment until the employee described in this paragraph has made the required election.

(b) The retirement allowance for service rendered prior to the effective date of the election under paragraph (2) or (3) of subdivision (a) for an employee covered by any other pension calculation shall be calculated under the employee's prior pension calculation. Any employee who has made an election shall not be eligible for retirement unless the employee meets the minimum requirements of the provision or provisions pursuant to the election applicable at the date of retirement.

(c) (1) An election for the pension calculation stated in Section 31676.01 by any employee hired before approval of the resolution shall include the signature of the designated beneficiary of the employee's pension acknowledging the election, or shall include a written declaration of one or more of the following as may be applicable:

(A) The beneficiary has no identifiable community property interest in the benefit.

(B) The employee does not know, and has taken all reasonable steps to determine, the whereabouts of the beneficiary.

(C) The beneficiary has been advised of the election and has refused to sign the written acknowledgment.

(D) The beneficiary is incapable of executing the acknowledgment because of an incapacitating mental or physical condition.

(2) The purpose of this subdivision is to notify the beneficiary, including the employee's spouse or domestic partner, of an election made by the employee that may affect the entitlement of the beneficiary. In addition to the foregoing, if the designated beneficiary of an employee's pension is a spouse or domestic partner of the employee, the election shall also evidence agreement to the election by the spouse or domestic partner.

(3) A person who knowingly provides false information in the written declaration submitted pursuant to paragraph (1) shall be subject to a civil penalty of not less than one thousand dollars (\$1,000) and not more than twenty-five thousand dollars (\$25,000), in addition to any civil remedies available to the board. An action to impose a civil penalty pursuant to this paragraph may be brought by any public prosecutor in the name of the people of the state.

(d) In the event the employee elects the pension calculation stated in Section 31676.01, the employee shall be eligible to receive a contribution from the county or district based on the employee's contribution to a defined contribution program.

(e) In addition to employees represented by bargaining units, any other employees not represented by a bargaining unit, as well as supervisors,

managers, and executives, may be subject to subdivision (a) pursuant to the resolution described in subdivision (a).

(f) This section shall apply only to members who retire on or after the effective date of the resolution described in subdivision (a).

(g) This section shall not apply to safety members.

(h) A resolution adopted by the board of supervisors under subdivision (a) shall not apply to the employees of any district within the county. The governing body of a district may elect, by resolution adopted by majority vote, to make this section applicable to the employees of the district irrespective of whether the board of supervisors has made that election applicable to employees in the county.

(i) A resolution adopted pursuant to this section may require any member that elects or is deemed to have elected the pension calculation stated in Section 31676.01 to pay additional member contributions beyond those member contributions required under Section 31621. These additional contributions shall not result in an additional benefit to the member. However, the additional contributions paid by a member pursuant to the authority granted by this subdivision shall become part of the accumulated contributions of the member for the following purposes only:

(1) Funding the annuity portion of the member's retirement allowance.

(2) Withdrawal of contributions by the member upon the member's withdrawal from, and termination of membership in, the retirement system.

(j) Any person employed subsequent to the effective date of a resolution adopted under subdivision (a) who would otherwise qualify as a member shall not become a member until he or she certifies his or her election, or otherwise as described above has been deemed to have elected, to be covered by the pension calculation stated in Section 31676.01 or the pension calculation stated in Section 31676.19. Once the election is made or is deemed to have been made, the employee will become a member retroactive to the date of hire. Any employee who subsequently otherwise becomes eligible for the pension calculation stated in Section 31676.19 subsequent to the effective date of a resolution adopted under subdivision (a) shall continue to be covered by any immediately preceding retirement plan to which he or she was entitled from the county or district until he or she certifies his or her election to be covered by the pension calculation stated in Section 31676.01 or the pension calculation stated in Section 31676.19.

(k) In the event that the final day to make an election or perform an act described in this section falls on a weekend or on a county or district holiday, a subsequent election or act shall be timely if made or performed on the immediately following regular business day of the county or district.

(l) This section shall apply only in Orange County.

SEC. 2. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order that the terms of a memorandum of understanding between the Orange County Employees Association and Orange County regarding the

implementation of a new, optional tier of retirement benefits for new and incumbent employees take effect as soon as possible, it is necessary that this act take effect immediately.

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